

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

STATE OF TEXAS,)
GUN OWNERS OF AMERICA, INC.,)
GUN OWNERS FOUNDATION, and)
BRADY BROWN,)

Plaintiffs,)

v.)

BUREAU OF ALCOHOL, TOBACCO,)
FIREARMS AND EXPLOSIVES, UNITED)
STATES DEPARTMENT OF JUSTICE, and)
STEVEN M. DETTELBACH in his official)
capacity AS THE DIRECTOR OF ATF,)

Defendants.)

Case No. 6:23-cv-00013

JOINT STATUS REPORT

The parties respectfully submit this joint status report pursuant to the Court’s order of July 31, 2023, ECF No. 65. That order stayed proceedings in this matter “pending the Fifth Circuit’s resolution of the expedited appeal in *Mock v. Garland*,” No. 23-10319 (5th Cir.), and instructed the parties to submit a status report within seven days of “the Fifth Circuit’s decision” in that appeal. *Id.* at 3.

On August 1, 2023, a panel of the Fifth Circuit issued a decision in *Mock*. The panel reversed the district court’s order denying the plaintiffs’ motion for a preliminary injunction for failure to demonstrate a likelihood of success on the merits, and remanded for the district court to determine in the first instance whether the plaintiffs are entitled to preliminary relief. *Mock v. Garland*, --- F.4th ---, 2023 WL 4882763, at *20. Each party in

Mock has until September 15, 2023, to file a petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 40(a)(1). In the event neither party seeks rehearing of the panel’s decision, the government expects that the Fifth Circuit’s mandate will issue on September 22, 2023, unless a party moves to stay the mandate pending a petition for a writ of certiorari. *See* Fed. R. App. P. 41(b), (d); *see also* Fed. R. App. P. 26(a)(1)(c). Until that mandate issues, this Court’s preliminary injunction will remain in effect, and Defendants will remain precluded from enforcing the Rule against Plaintiffs. Order at 7, ECF No. 51 (“The preliminary injunction will remain in effect pending resolution of the expedited appeal in *Mock v. Garland*.”)

Plaintiffs’ Statement

The Court granted Defendants’ Motion to Stay Proceedings (ECF 58) pending the Fifth Circuit’s resolution of the expedited appeal in *Mock v. Garland*, No. 23-10319. ECF 65. The Court ordered the parties to file a status report within seven days of the Fifth Circuit’s decision in *Mock. Id.*

The Fifth Circuit issued its decision on August 1, ordering:

For the foregoing reasons, we REVERSE the order denying a preliminary injunction and REMAND with instruction to consider that motion expeditiously. To ensure relative stability, we MAINTAIN the preliminary injunction pending appeal that the motions panel issued on May 23, 2023, as clarified by this merits panel on May 26, 2023. This court’s injunction will expire 60 days from the date of this decision, or once the district court rules on a preliminary injunction, whichever occurs first. We direct the district court to rule within 60 days.

Mock v. Garland, No. 23-10319, 2023 WL 4882763, at *20 (5th Cir. Aug. 1, 2023).

Consequently, the Plaintiffs request that the Court lift the stay, and object to continuing the stay. If the Court lists the stay, Defendants' deadline to respond to Plaintiffs' complaint is two weeks after the stay is lifted. ECF 60. Further, should the Court lift the stay, Plaintiffs anticipate filing their Motion for Summary Judgment on or before September 8, 2023.

Defendants' Statement

This Court should keep proceedings stayed in this matter "pending the Fifth Circuit's *resolution* of the expedited appeal in *Mock*," as its stay order provides. *See* Order at 3, ECF No. 65 (emphasis added). The United States is assessing how to best proceed in light of the *Mock* decision, including whether to seek further appellate review, which would "certainly affect . . . the disposition of some of the issues in this case." *See id.* Additionally, because the government does not expect that the Fifth Circuit's mandate in *Mock* will issue before September 22, 2023, and because this Court's preliminary injunction will remain in effect until that mandate issues, *see* Order at 7, ECF No. 51, there is no need for the Court to take any action at this time.

Dated August 8, 2023.

/s/ Stephen D. Stamboulieh
STEPHEN D. STAMBOULIEH
Mississippi Bar No. 102784
Southern District of Texas No. 3554925
Stamboulieh Law, PLLC
P.O. Box 428
Olive Branch, MS 38654
(601) 852-3440
stephen@sdslaw.us

ANTHONY R. NAPOLITANO
Arizona Bar No. 034586
Southern District of Texas No. 3837680
Bergin, Frakes, Smalley & Oberholtzer,
PLLC
4343 E. Camelback Road, Suite 210
Phoenix, Arizona 85018
(602) 848-5449
anapolitano@bfsolaw.com

GILBERT J. AMBLER
Virginia Bar No. 94325
Southern District of Texas No. 3834055
20 S. Braddock St
Winchester, VA 22601
(540) 550-4236
gilbert@amblerlawoffices.com

*Counsel for Plaintiffs Brady Brown, Gun
Owners of America, Inc., and Gun Owners
Foundation*

Respectfully submitted.

ANGELA COLMENERO
Provisional Attorney General of Texas

RALPH MOLINA
Deputy Attorney General for Legal
Strategy

/s/ Charles K. Eldred
CHARLES K. ELDRED
Chief, Legal Strategy Division
Texas Bar No. 00793681
Southern District of Texas No. 20772

CHRISTINA CELLA
Assistant Attorney General
Texas Bar No. 24106199
Southern District of Texas No. 3355870

OFFICE OF THE ATTORNEY
GENERAL OF TEXAS
P.O. Box 12548
Austin, Texas 78711-2548
(512) 936-1700
Charles.Eldred@oag.texas.gov
Christina.Cella@oag.texas.gov

Counsel for Plaintiff State of Texas

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

BRIGHAM J. BOWEN
Assistant Branch Director

/s/ Jody D. Lowenstein

JODY D. LOWENSTEIN (MT Bar No. 55816869)

MICHAEL DREZNER (VA Bar No. 83836)

TAYLOR PITZ (CA Bar No. 332080)

Trial Attorneys

U.S. Department of Justice

Civil Division, Federal Programs Branch

1100 L Street NW

Washington, DC 20005

Phone: (202) 598-9280

Email: jody.d.lowenstein@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that on August 8, 2023, I filed this motion through the Court's CM/ECF system, which automatically served it upon all counsel of record.

/s/ Charles K. Eldred